

REASONS

FOR THE

General CC

Earl of Maclesfeld's

Bill in Parliament,

For Dissolving the Marriage between Him and
his Wife, and Illegitimizing her Spurious
Issue.

THE Bill by way of Petition, according to the usual Form in like Cases, recites the Lady's notorious open Adultery, having had Children begotten on her Body in Adultery, and using vile Practices to have her spurious Issue imposed and obtruded upon him; therefore it enacts and adjudges, That the Bond of Marriage being notoriously and scandalously violated by her Adultery, be from henceforth dissolved, annulled, vacated, and made void.

That it be lawful for the Earl to Marry again; and that the Wife and Children of any other Marriage shall enjoy all advantages as if he had never been Married to this Lady, or that she had no Issue.

It illegitimizes and disinherits the Issue begotten, or to be begotten on her Body; and enacts, that all the Estate of the Earl, and of his Father, shall be in the same plight and condition, and Persons inheritable to it, as if she had no Child.

Preserves the Settlement of the Estate, which moved from the Earl's Father, in all the Limitations other than to her and her Issue.

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As to the Estate which came from her Father, gives her what she has by the Settlement in *Bishops-Castle* during the Earl's Life, or after his Death, so that it extend not beyond her own Life. As to *Sutton*, preserves all the interest after the Earl's Death without restriction.

For *Bishop's Castle* Estate, it is to be considered, that this which was valued at 10000 *l.* with 2000 paid, was to be as a Marriage Portion, and therefore was settled in the Earl's Family, with the Remainder to his right Heirs: indeed she has her Life in it by way of Joynture; but as Joynture comes in lieu of Dower, according to the Reason of the Common-Law, she ought not to have so much as her Life in it; for Dower is forfeited by Adultery, and this may be pleaded by the Heir, though never proved in any Court during the Father's Life: agreeably to which, even *Doctors-Commons* takes away Alimony after Proof of Adultery.

But surely there can be no colour that her Adultery, and the just consequent of that, should deprive the Earl's Brother of what he claims in remainder by the Settlement.

The Earl of *Macclesfield's* Bill having been Read in the House of Lords, and Leave given for him to make good the Allegations of his Bill, she has petitioned to be Heard against their Lordships hearing his Proofs, upon the suggestion, That the same matters are contained in his Libel in the Ecclesiastical Court, and that they are properly determinable there. Upon which, these Particulars are humbly submitted to the Consideration of their Lordships.

1. That an Order was made in a full House, for admitting his Lordship to make out his Allegations.

2. The Pendency of a Suit in *Doctors Commons*, can be no Argument against Proceedings in Parliament; unless they were judicially by way of Original Cause.

3. If this came by way of Appeal from *Doctors Commons* before Sentence, then it might be Objected, That it is of the Nature of an Original Cause: But if either Party were aggrieved by Sentence in *Doctors Commons*, it has been held, that no Appeal in Parliament will lye, but that the Final Judgment is with Commissioners appointed by the King or Chancellor: which makes it evident, that if the Parliament cannot relieve by the Legislative Power, it's certain it cannot judicially; and therefore according to the inference from its being an Ecclesiastical Cause, there can be no Relief.

4. The Matter is not wholly of Ecclesiastical Cognizance, for only the Parliament can illegitimate the Issue.

5. The Earl is in reason to be thought to stand better for relief in Parliament than if he had never proceeded in *Doctors Commons*; having gone through all the tedious Methods of that Court, for proving his Lady's Adultery; where Publication has passed, and as many of his Witnesses have been cross-examin'd, as she has thought fit.

6. Nothing



6. Nothing could have hindered a Sentence, but such gross delays, as argue her Quilt; nor ought her own Fault to serve her for an Exception.

7. A Sentence in *Doctors Commons* cannot add to the clearness of the Proofs, or credibility of the Witnesses; which she has declined examining to.

8. She has declared, That she would use delays on purpose to keep him from remedy in Parliament; and her Agents have declared, They would keep the Cause Three years in *Doctors Commons*.

9. If either Party should dye before this Cause were determined, no Sentence could be obtained in *Doctors Commons*; and it is to be considered whether it would not be much more difficult to have relief in Parliament against her spurious Issue, if she were not alive to make her defence.

10. The Earl has Proof to produce before the Lords, which was not within his Allegations at *Doctors Commons*; and that of such a nature, as may shew, that speedy Relief in Parliament is necessary for his safety, and the preservation of his Family.

11. She has manifestly waved those opportunities for clearing her self, which are the only ground why in the case of Adultery, after a Separation from Bed and Board, chosen by either side, the Innocent Party should proceed in the Spiritual Court.

12. She has had several long days given her to plead any matter to clear her self, and is at last justly denied to have any farther day: from which 'tis probable she will Appeal to spin out the time; and however, may, according to the methods of *Doctors Commons*, keep the Cause there several years, upon those frivolous Allegations which she has put in.

13. The *Papish* Canons still prevailing in that Court, nothing but the Legislative Power can give the Remedy allowed by the Divine Law, which permits Second Marriages; whereas the *Papish* Canons allow of no farther Separation than has been between these Parties for several years.

14. If want of Sentence in the Spiritual Court has been Objected in any other Case, the Fact has not been proved in that Court, and Publication of the Proofs passed. Besides, there has been no proof of Children offered in Parliament; and either the proof of the Fact has been doubtful, or there has been Cohabitation, or Reconciliation, after the Innocent Party has had notice of the Fact.

15. A Sentence in *Doctors Commons* is not final, or certain, but subject to an Appeal before the Delegates; and in the Case of the Earl of *Banbury*, the Delegates set aside a Marriage which the Court of the *Archies* held good.

16. The Legislative Power is not in its own nature confineable to any Ecclesiastical Rules or Laws, and has set several good Presidents of breaking through them.

The Deprivation of Bishops is of Ecclesiastical Cognizance, their Institution held as Sacred as Matrimony; and yet in *Popish* times Bishops have been Deprived by Act of Parliament, without Sentence in any Ecclesiastical Court, and for matters for which they were not depriveable by any Ecclesiastical Law. And since the Reformation, deprivations in the Spiritual Courts have been confirmed by Act of Parliament, notwithstanding the Pendency of Appeals.

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The Legislative Power has very lately, in the case of Mrs. *Wharton*, declared a Marriage from thenceforth to be Null and Void, without any Proceedings in *Doctors Commons*.

And farther yet, since the Reformation, a Marriage which is declared to be contrary to certain Decrees and Canons of the Pope's Law, is ratified *ex post facto*, and enacted to be a Good, Lawful, and Perfect Marriage, as agreeing with the *Levitical* Laws and Holy Scriptures, whereunto it says, *All Marriages by the Laws and Statutes of this Realm have been heretofore most justly referred.*

Further CONSIDERATIONS for the Earl of Maclesfeld's BILL.

Besides the former Reasons; Bishop Cozens's Argument for the Lord Rofs; and the Earl's Printed Case.

In Answer to a Mock-Case, published for the Lady Maclesfeld; so little for her Service, as if it had been writ by one of the Earl's Council.

THAT Bity which Men are apt to shew, to the Frailties and Mischances of *Ladies*, becomes ridiculous, after a Woman has suppressed that sense of Shame, which may be thought, in some measure, to lessen the Faults which it covers with Blushes; when she withstands the clearest Conviction; and not only justifies that Injury to a Family, for which even Repentance cannot expiate; but has the assurance, to ask to be publicly rewarded for it: As if the Absolute Conquest of Modesty were matter of Triumph!

This would not be thought possible, but for the *Lady Maclesfeld's* way of proceeding to support her Adultery, and the Paper which she has published as her Case: In which her *gentle Casuist* (who, it seems, advised her to swear in the *Spiritual Court*, That she was and is a Person of a *Virtuous Life*, and for such was reputed and taken to be, after publication of the most manifest proofs of two Children begotten in Adultery) has persuaded her to argue upon the presumption of Innocence: and yet to give it up, as unnecessary for obtaining her Fortune; one of the ends which she proposed to her self before she left the *Late Earl's* House. For, whatever her Life has been since, her *Casuist* will have it, that she ought to have all she brought, back again; because, as the Paper groundlessly pretends, her Husband had *Maliciously secluded her from Bed and Board*: which is, in effect to say, that though she had been contented with her Separate Maintenance of 300 *l.* a Year, before there was proof of her having Children in Adultery; she ought now to have an Allowance from her Husband of 200 *l.* a Year; and if she survive her Mother, of Four, over and above her Separate Maintenance, in consideration of that Additional Charge: In plain terms, that her Husband ought to keep another Man's Bastards.

And yet this is not all, but according to the *Lady Maclesfeld's* profound *Casuist*, a Settlement ought to be broken, and the Inheritance of Land taken away, not only from the Earl, but from his Brother, Legally interested in the Remainder; for the sake of an *unrepenting Adulteress*, with the aggravation of having charged her Husband with subornation of Perjury for proving the Infamy upon her; and whose hate to him has been so violent as to extinguish all tenderness for her *Lover*; carrying her, in the height of her Rage, to wish for a Duel between them: and who, after all, threatens her Husband with an interest against the passing an Act for an Absolute Divorce, unless he and his Family consent to give back what had been settled on them for a consideration, her share in which she has justly forfeited.

'Tis now so far from a Question, *Whether Adultery dissolves the Bond of Marriage, without any Sentence in Doctors Commons*; that her indulgent *Casuist*, supposing a *Malicious Seclusion from Bed and Board* to be her Case; maintains this to be a *just cause of Divorce*, and that a Divorce

does

Note, Though she was particularly charged with this above 9 Months since, she has not to this day pleaded contrary matter.

Vid. Some Thoughts concerning Divorce.

AND
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does always dissolve the whole Frame of the Marriage-Contract : Which must needs be meant of Divorce according to God's Law, or Natural Equity : not such as is in Doctors Commons ; which does not always dissolve the Contract.

But 'tis to be observed, that the *Casuiſt*, in applying his Notion to the *Lady's* Case ;

1. Contrary to truth, and without the least shadow of Evidence, takes it for granted, that she was *Maliciously ſecluded from Bed and Board* : When, to use his own words with little variation ;

1. *The Proof of this ought to be very cautiously received.*

2. *It ought to be very full, and clearly made out, by Witneſſes againſt whom there can be no ſhadow of a juſt exception* ; becauſe ſhe who will venture the having Children in Adultery, while ſhe lives wholly Separate from her Husband, and then ſwear in the Spiritual Court that ſhe has lived a Virtuous Life, *may be ſuſpected at leaſt, to be capable of bringing an unfair proof*, to extenuate, as ſhe thinks, her Crime. Beſides, Practices of this Nature have already appeared on her ſide.

3. As he inſinuates, that there can be no juſt Cauſe of putting a Wife away, till *convicted of Adultery, or other Perſonal Miſbehaviour towards her Husband* ; by parity of Reaſon, there can be no excuſe for living in Adultery with another, till the Husband has been *convicted of a Malicious ſecluſion*. And they who have obſerved what Lies have been invented, and vile Arts uſed, to keep up the Reputation of the *Lady's* Innocence, muſt think that even this pretence labours with a ſtrong prejudice.

4. Had not her *Casuiſt* too much conſulted her Pleaſures, he might have informed her, That if ſhe had been without Cauſe ſecluded, as is falſly given out ; ſhe ought by her virtuous and retired Life, to have endeavoured to regain her Husband's Eſteem. Whereas the Courſe of her Life, and her own way of *expoſing* it, are a Confutation of all her vain Pretences : and ſhe her ſelf removes thoſe falſe Colours, with which ſhe would hide Facts that are notoriously known.

5. 'Tis now admitted by her greateſt Advocates, that ſhe has had Children in Adultery ; and though the Children have not hapned till ten Years after living apart from her Husband, 'tis well known ſhe did not live Virtuous ſo long. 'Tis in proof, that ſhe has owned a former Miſcarriage ; and the World talks loudly of Occaſions for more ; how largely ſoever ſhe her ſelf has ſworn to her Reputation. Therefore I would ask even her own *Casuiſt*.

1. Whether upon his own Principles ſhe is now entitled to demand a Divorce ?

2. Whether ſhe has any right to demand her Fortune to be refunded, unleſs ſhe has right to demand a Divorce ?

3. Whether to give back her Fortune, would not be a rewarding Adultery, inſtead of puniſhing it ?

4. As he confeſſes it to be *againſt natural Right, that Innocency ſhould ſuffer Damage* ; would it not be ſo, to deprive the *Earl's* Brother of part of his Remainder, for no other reaſon, but the more plentiful maintaining her in Adultery, and eaſing her Keeper, who has hitherto defrayed the Charges of Lying in, and all other Expences which mercenary Women put Men to.

But in answer to the *Natural Query*, which the admirable *Female Caſuiſt*, and Defender of *Corrupt Nature*, ſuppoſes to ariſe from the Circumſtances of her Caſe, (*viz.*)

Q. "Whether a Man, who is guilty of making his Wife commit " Adultery, deſerves to be plentifully rewarded out of the ſame Wife's " former Fortune.

Anſ.

Ans. 1. The Lady *Maclesfeld* was not denied Marriage-Rights while she cohabited with her Husband, nor was put away by him; and she well knows how tender the *Earl* was, upon a Letter of *Assignment* which fell into his hands, within a very short time after they were Married; nor are the other early Occasions, which he had to have put her away, unknown to her self. And whether she had not been guilty of *Personal Misbehaviour towards her Husband*, he might appeal to her Mother; were it to be expected, that she, who would give 1000 *l.* to blacken him and his Witnesses, could imitate the *late Marquess of Dorchester*, in a generous concern for a Son-in-Law, injured by a Daughter.

2. Unless the Lady had liv'd virtuously ten Years, and after so long sober Conversation, had been rejected by her Husband, and at last prevailed upon to Transgress; his putting her away, [if he had done himself that Right] could not be the Cause of her committing the Adultery with which she is charged.

Besides, had not her *Casnist* very partially considered *Bishop Cozens's Argument*, and *Sacred Writ*, he might have found, that as one Text supplies what is left out in another, an Husband does not commit *Adultery*, or *cause the Wife to commit Adultery*, by the bare putting her away; till he has cut off all possibility of Reconciliation, by a Second Marriage: For as 'tis, *Matth. 19. 9.* "Whosoever shall put away his Wife, except "it be for Fornication, [and shall marry another] *commiteth Adultery*. And he might have learned of the *Bishop*, That 'tis not the Dismissal that is *Adultrous*, but the marrying of another; which shews, That she ought by her good Life, and respectful Discourses of him, to have endeavoured to be freed from the Temptation to Adultery, much rather than to accuse him of her Crime.

3. If she her self had with Tears of Repentance discovered her Misfortune; or after it was discover'd by others, had been so far from maintaining her Innocence by Subornations, and imputing her own Perjury to his Witnesses, that she had thought the complying with his Request of being seen by two of his Relations, when she was big with Child, a more happy necessity, than to *poysen her self*, or *Lye-in in Newgate*; and had she, in that Condition, applied her self to his Compassion, and done what was in her power to repair an Injury of the highest Nature; then there might have been greater Colour for her having back her Fortune, than now that she has openly defied her Husband, and the Justice of the Nation, and put him to such excessive Trouble, not to mention Charge, to free himself from her, and the dishonourable Burthen she would lay upon him and his Family.

As she declared her choice, upon notice, that the Earl desired she might be produced.

4. The Provision which the *Earl* offers in his Bill, is as much as she had by Law, while she would be thought to live with the Reputation of Virtue; and as much as the *Dean of the Arches* judged sufficient *Alimony*, till the time of forfeiting it by the course of the *Spiritual Court*: And as that *Grave and Learned Judge* thought it unreasonable to advance her Maintenance, after Allegation and Proof of Adultery; it would be very strange, if after the Matter were passed into the most solemn Judgment, a Divorce for Adultery, which works a forfeiture of *Alimony* (even where the Remedy is short of what God's Law allows, if not requires) should occasion a larger Provision than she had before.

5. If the *Earl* had put her away, 'tis manifest it could not be from any temptation of being better'd by her Fortune; for she or her Mother has from the first parting received all the Profits of the Estate which came with her; nor would have been put to account for the Overplus beyond the separate Maintenance, but for the greatest Provocations that could be given.

Some Thoughts, &c.
No man should be encouraged to put away his Wife by the largeness of that Fortune which she brought.

As to 1000 *l.* a Year Rent-charge out of his own Estate, which was settled in Jointure, that could not be saved by the putting her away; nor is it any Ease to the Estate during the *Earl's* Life, or after his Death, if he marry another on whom he has power to make the like Settlement: And besides, the 1000 *l.* a Year is not taken from her by the Bill, but falls by natural consequence, upon the dissolution of the Marriage-Contract.

Leviticus 20. 10.
The man that committeth adultery with another man's wife, the adulterer, and adulteress shall surely be put to death.

6. Even the provision which the Bill makes for her out of the Estate which came from her Father, is more than consists with the Reason of the *Jewish* Law, and the Laws of other Nations, by which the Adulterers ought to be put to death.

7. 'Tis more than agrees with the Reason and Wisdom of our Law, as we have received it from our Ancestors, even though the *Earl* had put her away, and that without cause: When, in truth, whatever cause he had for it, he did not put her away.

'Tis to be considered, that so much of the Estate as her Father gave instead of Money, is settled on her as part of her Jointure: and in this the Bill allows her no more than her Life; but leaves another Estate as 'twas given in worth near 4000 *l.* to her and her Family, after the *Earl's* death: when according to the Equity, if not to the Letter of the Statute of *Westminster* the 2d. 13 E. 1. she ought not to have any Allowance whatsoever.

That Statute declares, "That if a Wife goes away voluntarily, and stays with an Adulterer, she shall lose her Dower for ever, unless the Husband voluntarily, and without Ecclesiastical Coertion, be reconciled to her, and permit her to cohabit with him: This has been held to extend to a subsequent Consent, though a Woman was forced away at first: But more directly to the *Casuits* Question, it has been adjudged by the King, and his Council in Parliament, 30 E. 1. that though a Wife be formally made over by the Husband, and resigned to another Man, yet she forfeits her Dower: Nor is it any Objection, that the Statute mentions only Dower; because,

1. Jointure is but in lieu of Dower, and within the same Reason.

2. Dower at the Church-door, or, at least, with assent of the Father, which, as has been held, ought to be by Deed; is truly a Jointure: And yet this would be forfeited in such a Case.

3. The forfeiture of Dower is incurred without any manner of Divorce; and a Divorce for Adultery takes away Alimony in the *Spiritual Court*; but by an Act of Parliament which dissolves the Bond of Marriage, a Jointure, supposing it of a different nature from Dower, of course falls to the ground: It being settled upon the Woman no otherwise than as a Wife; which relation ceasing, there remains no colour of Law to support it.

Nor can there be Equity; because Equity follows the Law, and must be governed by the Reason of the Statute of *Westminster* the 2d.

Since, however, some make Scruples, because there has been no Divorce in *Dollors Commons*, and as if there could be no other due conviction of Adultery; not here to repeat what has been mentioned in the former Reasons for the *Earl's* Bill, 'tis to be observed; That the Memorable Judgment in Parliament, 30 E. 1. was even contrary to a Sentence in the *Ecclesiastical Court*; where the Woman that eloped with the consent of her Husband, had been purged, or acquitted from Adultery: And the Parties believing, it seems, that a Jury would not go contrary to *Holy Church*, offered an Issue, that they had not lived in Adultery during the Life of the former Husband; but were denied the benefit of a Trial, because, as was then declared in Parliament, there's no need of Trial for Matters which appear manifest to the Court.

F I N I S.



ad Inst. f.

Placita Parl.
f. 231, 232, 233.